NOTES

WASHINGTON NOTES

THE RAILROAD RATE BARGAIN
POLITICAL SIGNIFICANCE OF THE RAILROAD SITUATION
METHODS OF RATE ARBITRATION
THE MISSOURI RATE CASE
TRANSPORTATION DEMANDS OF THE MIDDLE WEST
RAILROAD CAPITALIZATION

Events occurring in the railroad world and in Congress during the month of June have brought the railroad situation throughout the United States to a critical pass that it has never before reached. At the same time, the system of government control from Washington has also been placed on trial and will be called upon, within the next twelve months, to vindicate itself in a definite way that has never before been demanded. The new developments were almost wholly unexpected, and grew out of the fact that the railways of the country, practically by common consent, had been filing rate advances up to the close of May with numerous others still to be looked for during June. These advances proved extremely distasteful to shippers, whose feeling has been that the increasing railroad gross earnings of the past few months were such as to warrant the roads in the maintenance of their old tariffs. A protest from an influential shippers' convention, held in Chicago during the latter part of May, having proved of no avail, the shippers determined to demand of the government that it proceed against the roads in some way that would effectually suspend the proposed rate increases, thereby preventing them from becoming effective. At a meeting with the shippers' representatives in Washington on May 30, Attorney-General Wickersham practically promised action; and on the following day, after a consultation with the President, Mr. Wickersham secured from United States District Judge David P. Dyer, at Hannibal, Mo., an injunction whereby the railroads were prohibited from putting into effect the higher rates which had been filed early in May, and which would otherwise have gone into operation on June 1. This injunction affected about 25 roads operating throughout the Middle

West, and was granted upon the basis of allegations made by the Department of Justice that the roads had entered into an unlawful combination or agreement for the raising of their rates of transportation. The immediate effect of the action of the attorney-general and of Judge Dyer was a serious break in the prices of stocks on the New York market. The decline was followed by an agreement between the President and the heads of some of the western roads that the higher rates proposed should be withdrawn, and that the injunction proceedings should be kept in abeyance, pending the passage of the new railroad bill, which has been under consideration in Congress, and the reference of the whole rate dispute to the Interstate Commerce Commission for adjudication. This agreement between the President and the western roads was reached on June 6, and was followed next day by a similar agreement between the Executive and the heads of the eastern roads. The effect of these agreements, therefore, has been to throw into the hands of the Interstate Commerce Commission what amounts to an arbitration between the railroads of the country and the whole body of shippers, respecting the rate of return upon railway capital, and the cost of transporting all classes of goods.

Apart from the vast economic importance of the situation thus created, certain political issues of very great scope and significance are presented. President Taft and Attorney-General Wickersham, who originally drafted and presented to Congress the railroad control measure which has been under consideration all winter (H.R. 17,536 and S. 6,737), had made no effective provision for the referring of proposed rate increases to the commission prior to the time they were to take effect and for their consideration and suspension by the commission. That provision had been incorporated into the Senate bill at the instance of a body of so-called "insurgent Republicans" from the Middle West, aided by Democrats. The friends of the drastic provision for preliminary consideration of rate increases by the commission had been opposed at every step by the administration forces in Congress. The bill, however, as it took form, contained enough that would have tended to render the increasing of rates a matter of greater difficulty, to influence the roads toward the filing of as many rate increases before the passage of the act as possible. Coincidently with these

increases, the demand of the shippers for preventive action on the part of the federal government practically compelled the President to acquiesce in the bringing of the injunction proceedings, and the outcry resulting therefrom almost at once forced him to assent to the withdrawal of the proceedings—a situation which necessitated his adopting the provision for preliminary arbitration by the commission as his own. In this roundabout way, there was foisted upon the administration a proposal for which it originally had little sympathy. The situation has become the more embarrassing because of two features of the past winter's legislative program in Congress. President Taft early asked Congress to repeal the provisions of the Interstate Commerce Act which prohibit the making of traffic agreements, and to render the Sherman anti-trust law inapplicable to inter-railroad combinations under specified conditions. He further protested to Congress against the use of injunction processes without "notice," particularly in labor disputes involving transportation questions, and asked the legislative body to modify the present practice regarding the issue of injunctions by courts of equity. In the action forced upon the Executive by the demands of the shippers it was, however, necessary to secure the injunction as privately and as hastily as possible —secrecy and haste being the two features of former injunction proceedings most complained of—and to base the application upon the fact that the roads had conspired together in violation of the two provisions of law for whose repeal the administration had urgently made request. This inconsistency has undoubtedly modified in a most serious way the power of the Taft administration to secure action upon either of the points referred to, during the whole of its future life. At the same time, the promise to refer the rate dispute to the Interstate Commerce Commission has thrown upon the President the whole burden of forcing the adoption of the provision for preliminary submission of rate increases to the commission.

The immense task now to be intrusted to the Interstate Commerce Commission is one for which it is largely unprepared and lacking in equipment. No physical valuation of the railway operating property of the United States has ever been made. Railroad accounts as submitted to the commission at the present time are not sufficiently detailed to provide the data which are wanted in

the work that is now to devolve upon the commission and, while that body has the power to secure the needed information from the books of the companies through special examiners of accounts, it is already too late to get much of it in a form that will make it available. Moreover, the commission is not wholly harmonious within itself respecting the principles which should govern in the establishment of railroad rates. The view that cost of production is an important factor which should largely control in establishing rates is entertained by several members of the commission, while others probably are not fully decided in their own minds with reference to that branch of railroad theory. In the past, the commission has devoted most of its time to the study of particular rates or classes of rates, and a large proportion of its decisions are apparently based upon the view that rates may in given instances fairly be determined by comparing them with other rates of similar kinds. This practice of determining the fairness of rates by referring them to other similar rates as a standard has prevented the definite acceptance of positive principles applicable to the general question of rate-making. Only in a few cases, such as the southwestern rate cases and the southeastern cases (both involving the heavy and general advances of 1908), has a problem of similar scope been offered. The recent Spokane cases have been of a kind to develop some issues that would be instructive in the pending rate arbitrations, but neither in the Spokane cases nor in the southwestern cases have final decisions been rendered at this writing. It may therefore fairly be said that the commission is now to take up a new kind of railroad issue. The method of procedure will probably be that of selecting some representative schedules of proposed rate increases—such, for instance, as the New York–Chicago trunk line increases—and of passing upon them. The opinion reached in such cases would then be transferred to all other schedules of rates involving substantially the same or similar territory and the same or similar increases. Whether this plan will prove sufficiently adequate and thorough is gravely doubted, and should it prove unsatisfactory the attempt to put it into effect may add materially to the difficulties of the case.

An opinion of the federal Supreme Court which will be of material importance in connection with the work now to be undertaken by the Interstate Commerce Commission was handed down on May

31, in the so-called Missouri rate cases (*The Interstate Commerce Commission* vs. *The Chicago, Rock Island & Pacific Ry., et al.*, Supreme Court, Nos. 663 and 664, October term, 1909). These cases involved action by the commission reducing the arbitrary charges made by the roads between Mississippi River and Missouri River points. The commission's order reducing the charges was of course protested by the roads themselves. Moreover in this protest the railroads were joined by representatives of various middle-western cities which feared that the rate changes would involve a diminution of the general business falling to their share. These complaints were sustained by the lower courts and an injunction restraining the Interstate Commerce Commission from compelling the lowering of the rates was issued. An appeal to the federal Supreme Court has resulted in the present opinion which sustains the original order of the commission and holds that that body had the right to order the cut in rates between the points specified. Considerable theoretical interest attaches to the case because of the fact that the adverse opinion of the lower court was based upon the view that the commission had not the power to reduce rates with a view to redistributing a given volume of traffic or to protecting a given place or section of the country in the enjoyment of certain traffic. The Supreme Court holds that no motive can be imputed to the commission (as was apparently done by the lower courts), and that while it would undoubtedly be a great abuse of the commission's power to employ that power for the purpose of instituting discriminations or of assisting or injuring one section of the country, the judicial inquiry upon the subject must be directed solely to the question whether the commission has or has not the power to reduce given rates and whether such reductions or changes as are made are in and of themselves reasonable. That the changes in the Missouri cases were "reasonable" in this sense the court believes and it therefore refuses to consider the question whether the changes in rates introduced by the commission would operate to help or injure given places or sections.

The rate situation as developed through the executive branch of the government in conference with the railroads and the shippers, as well as the course of events in Congress, has brought into great prominence the self-assertive attitude of one part of the country toward the transportation question. It is a notable fact

that most of the effort in both houses of Congress in support of radical changes in the railroad-rate measure there pending has proceeded from representatives of the Middle West. The same is true of the protest against the policy of the roads in filing rate increases. The drastic changes made in the original draft of the railroad bill prepared by Attorney-General Wickersham and approved by President Taft have included, (1) the provision of preliminary submission of rate advances to the commission, (2) physical valuation of railroad operating property, (3) inclusion of telegraph and telephone properties, along with the railroads, under the control of the Interstate Commerce Commission, (4) provisions designed to prevent the roads from destroying water competition, (5) an important revision of the "long-and-short-haul clause," and (6) the entire omission of all provisions designed to permit railway combinations to become legally operative. Not all these changes can be retained but their adoption on the open floor is highly suggestive. Practically all of them have originated with western members of Congress and the incorporation of the changes has been possible only through the agreement of western men ordinarily belonging to the conservative group in the Senate to act with the railroad radicals who were demanding "strong legislation" directed against the roads as such. The members of the conservative group who have thus acted with the radicals during the recent struggles on the floor have done so because of the irresistible demand of the communities which sent them to Congress for the amelioration of competitive conditions, through the establishment of transportation rates that would enable them to put their goods into the market in competition with those of more favorably situated communities.

One of the most significant features of the railroad struggle during the past winter has been the development of opinion with respect to the question of railroad capitalization. President Taft put forward the urgent necessity of federal control of capitalization of railroads as a fundamental reason for the pressing of his bill in Congress. The elaborate capitalization sections of the measure as drafted by Attorney-General Wickersham were not reported by the House Committee on Interstate and Foreign Commerce until they had been materially changed, while in the Senate, although they were reported from committee, it proved utterly

impossible to secure a favorable vote on these provisions, so that they were early allowed to drop from the bill without even a debate. The efforts of the President to force the sections back into the bill in some form have been unavailing and it is now apparent that if the capitalization question is to be brought to any definite issue in Congress it can be done only by pushing the subject forward in the form of an independent measure at some future session. The alignment of forces which has defeated the government's plan for the control of capitalization includes a practically solid body of Democrats, almost all of the radical or insurgent senators from the Middle West, and a very substantial number of "conservative" senators who are close to the railroad interest. From this it might be inferred that few or none desire control of railroad capitalization by the federal government. Analysis of the situation shows, however, that the various factions have acted from quite different motives. The one thing that stands out conspicuously in the struggle over the capitalization provision is the fact that the subject has not yet been sufficiently studied to produce a definite division and expression of view regarding it.